IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6482 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANNABEN SHRENIKBHAI

Versus

KAPILABEN H MODI

Appearance:

MR SM MAGZGAONKAR for
MR SN SHELAT for the petitioner.
MR YN OZA for Respondent No. 1
MR KM PARIKH for Respondent No. 2
RULE NOT RECD BACK for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 13/07/2001

ORAL JUDGEMENT

By means of this petition, the petitioner sought for quashing and setting the order dated 29-4-1993 passed by the Gujarat Secondary Education Tribunal in Application No. 837 of 1988.

2. The respondent was appointed as an Assistant Teacher on 24-8-1984. At the relevant time, the petitioner school was running primary section. The respondent preferred an application u/s 38-A being Application No. 862/88 before the Secondary Education Tribunal for continuity benefit as also grant of Selection Grade in her favour on the basis that she was appointed in the Secondary School.

3. The matter was contested by the petitioner contending that the appointment of the respondent in petitioner's school was treated as primary school and that primary school was not entitled for grant. Mere opening of 5th, 6th or 7th standards would not make the school a secondary school. Before filing Application No. 862/88 the respondent no. 1 also filed another Application No. 837/88 before the aforesaid Tribunal stating therein that the post of Principal in the petitioner's school was vacant since several years, no appointment of trained and qualified person as per the Rules was made to the said post and the respondent no. 1 was discharging the functions of Principal assuming the age of superannuation and as such also she was eligible to continue as Principal. The respondent no. 1 prayed that till regular appointment was made to the post of Principal, the respondent no.1 be given charge of In-charge Principal and be paid In-charge allowance admissible as per the Rules from the date the post of Principal fallen vacant. The Secondary Education Tribunal passed order dated 29-4-1993 in Application No. 837/87, wherein it is held as as under :

"In another litigation between the present applicant and the same opponent. school viz. in Application. no. 862/88 this dispute as to whether the applicant was a secondary teacher in the opponent. school during the period between 1964 and 1988, was raised and on the strength of that dispute the applicant was denied selection grade from a particular date. This Tribunal has by the judgment and order dt. 23 / 24.12.92 held that the applicant has been working as a secondary teacher in the opponent . school w.e.f. 1964. In the said application a rival contentions have been considered elaborately and therefore I need not dilate on the same once again in this judgment. Now, when this Tribunal has decided that the applicant has been working as a secondary teacher in the opponent. school

w.e.f. 1964, it has to be held that the applicant should be given credit marks for the period between 1964 and 1968 as a secondary teacher."

4. It was held and declared by the Tribunal that the respondent was entitled to the charge allowance with effect from 1-11-1990 till she continues as In-charge Head Master in absence of regular Head-Master vide order dated 29-4-1993. The said decision of the aforesaid Tribunal was challenged in this Special Civil Application No.630 of 1993. After hearing the parties, this Court allowed Special Civil Application No. 630 of 1993 in part. The prayer made in the said Spl. C.A. No.630/93 to the effect to direct the respondents no. 2 and 3 to pay admissible grant was rejected and the matter was remitted to the Tribunal for deciding in accordance with law on merits, by the judgment and order dated 11-8-1994. Pursuant to the said order of this Court the Tribunal decided the matter vide order dated 21-4-1998 and it was held by the Tribunal that from 24-8-1964 to 31-5-1968 the respondent had served as the Assistant Teacher in the primary section and therefore the said period cannot be counted for selection grade and the selection grade was dismissed. The copy of the said judgment of the Tribunal dated 21-4-1998 has been annexed with the additional affidavit filed on 14-3-2001.

5. On the strength of the findings recorded by the Tribunal in its judgment dated 21-4-1998 the learned counsel for the petitioner submitted that it is a question of fact whether the petitioner was secondary teacher or primary teacher at the relevant time and that can only be decided by the Tribunal itself. Therefore, that question with regard to the claim of the petitioner made in Application No. 837/88 can be examined and decided by the Tribunal for which the present petition has been preferred.

6. Heard the learned counsel for the parties and perused the relevant material on record. The question before this Court is whether the petitioner can be treated as secondary teacher or primary teacher for a period of four years from 1964 to 1968. Various aspects have to be examined and for that the parties will have to lead evidence in connection with the issue raised before the Tribunal. Therefore, it would be just and proper to remand the matter back to the Tribunal so that the matter in dispute can be decided after thorough examination. In case of any need or necessity the parties would be at liberty to lead additional evidence for proper decision

of the matter. Therefore, this petition is liable to be allowed and the matter is required to be remanded back to the Tribunal for a fresh decision.

7. Accordingly, this petition is allowed and the order dated 24-4-1993 passed by the Gujarat Secondary Tribunal, Ahmedabad in Application No. 837/88 is quashed and set aside and the matter is remitted back to the Secondary Education Tribunal, Ahmedabad and the Tribunal is directed to decide the matter a fresh in accordance with law after affording reasonable opportunity of hearing to the parties concerned as expeditiously as possible preferably within six months from the date of presentation of a certified copy or receipt of writ of this Court whichever is earlier. Rule is made absolute with no order as to costs.

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/JVSatwara/